



VIA Email to mweipert@house.mi.gov, klentkesto@house.mi.gov

June 1, 2015

Rep. Klint Kesto, Chair, Judiciary Committee
and Judiciary Committee Members
Attn.: Ms. Weipert, Clerk
Michigan House of Representatives
Room 521
House Office Building
Lansing, Michigan 48909

RE: Testimony Opposing parts of HB 4234 Law Enforcement Body-Worn Camera Privacy Act

Dear Rep. Kesto and Judiciary Committee Members:

The version of HB 4234 (H-3) before you is very similar to the original one introduced in February. It is very dissimilar to a second version (H-2) of the bill that achieved the same protections of privacy but also included accountability and transparency for the public and public access to the video and audio recordings under the state's Freedom of Information Act.

This revision does a disservice to the citizens of the state of Michigan and its law enforcement officers and agencies. Statutory language in Version H-3 that flatly states these recordings are not public records is bad public policy and defeats two of the major benefits of a police body camera program: building public trust in law enforcement officers and their actions and acting as a deterrent for bad actors be they police or citizens.

Specifically, we are opposed to language in Section 5 that very clearly states that a police body camera recording is "not a public record and is exempt from disclosure under the freedom of information act..." That statement is not mitigated by the additional language: "...but only to the extent that disclosure as a public record would do any of the following..." (listing six FOIA exemptions).

A record is either public or not. This language affirmatively blocks video and audio recordings from disclosure under FOIA. Michigan, by doing so, would become an outlier ignoring a national trend that makes these recordings public, subject to individual state FOIA laws.

We also oppose the inclusion of Sections 3 and 4. They create a broad, and again, unnecessary exclusion from public and judicial review under the state FOIA under the same rationale.



Michigan should not legislate hiding this important knowledge from its citizens. Exempting this law from the FOI requirements would remove any chance of impartial, neutral judicial review of exemptions as provided by the FOIA.

We recommend the following changes to HB 4234 (H-3):

Sections 3 and 4: Delete

Section 5: Delete the current wording and substitute the following: Audio and video recordings by a police body-worn cameras are public records as defined by section 2 of the freedom of information act, MCL 15.232.

Section 13 in Michigan's FOIA has established, court-tested provisions for exemptions for ongoing criminal investigations and to protect an individual's privacy. These exemptions have been generously interpreted by our appellate courts.

Version H-3 would not prevent police from releasing to the public video and audio recordings the individual departments deem appropriate, likely focusing on positive police actions while withholding videos that are embarrassing or reveal misconduct. That will further hurt police/citizen relations. The FOIA entitles Michigan's citizens "to full and complete information regarding the affairs of government and the official acts of those who represent them as public officials and public employees..." This requires unimpeded transparency and accountability.

The implementation, disclosure and access to police body camera recordings is a subject of national discussion among law enforcement agencies. In 2014, the Police Executive Research Forum (PERF) released a report titled "Implementing a Body-Worn Camera Program: Recommendations and Lessons Learned." The presumption in the 92-page report is that these recordings would be (and should be) available under the various jurisdictions' public disclosure (FOIA) laws, subject to existing exemptions.

The PERF report noted that body-worn cameras are "the future of policing." It also reported that police executives overwhelmingly agreed the cameras "...made their operations more transparent to the public and have helped resolve questions following an encounter between officers and members of the public." Transparency and accountability are key issues that HB 4234 H-3 negates. The PERF report also noted, as did other studies, that such FOIA lawsuits challenging exemptions are rare.

Topeka (KS) police chief Ron Miller is quoted saying, "Everyone is on their best behavior when the cameras are rolling. The officers, the public, everyone." This would not be the case in Michigan if the release of video and audio recordings is left to the sole discretion of local police.



Police body cameras are fast becoming a tool as basic as handcuffs. The video and audio from these cameras can protect officers from false claims of brutality and misconduct and insulate communities and taxpayers from expensive police brutality litigation and judgments. It can also restrain them from being overly aggressive in their dealings with citizens. Police dash cameras already record stops and, at a distance, encounters between police and citizens for traffic violations, etc. Further, the wide use by the general public of smart phones means that often someone will be filming an incident. That those videos can be edited before being made public is a further reason that the raw police body camera video and audio recordings should be available to the public and the news media. The central purpose of the FOIA is to allow citizens to gather information and facts so they can check and verify that public bodies, like police agencies, are performing their jobs properly.

The use of body-worn cameras by a number of law enforcement agencies across the country has shown significant reductions in police use of force and bogus citizen complaints against police officers. A pilot study in Rialto, California supported by the Police Foundation details the value of this program (<http://www.policefoundation.org/content/body-worn-cameras-police-use-force>). In Mesa, AZ, police wearing body cameras had 40 percent fewer complaints against the individual officers and 75 percent fewer complaints overall of excessive use of force. In these states and many others, police body camera recordings are public records under FOI laws though subject to relevant exemptions.

A concern previously raised by some police agencies was storage capacity and redactions. In an April 16, 2015 letter on an effort in Washington D.C. similar to the one attempted here, the Reporters Committee for Freedom of the Press noted that inexpensive software, like Adobe Premier Pro costing \$19.95 a month, allows easy redaction consistent with FOIA privacy concerns. Seattle police's chief operating officer said that 95 percent of their videos needed no redaction.

Version H-3 of HB 4234 would jeopardize the public health, safety and welfare of citizens; provide undeserved protection and cover for the few bad actors in the Michigan law enforcement community; endanger the public's trust in the integrity and professionalism of local police agencies; and further compromise the already poor public trust and perception of police agencies and their dealings with persons of color, particularly black men.

Undeniably, it is important to have these recordings be available to the public. Recent widely publicized incidents in Ferguson, MO; New York City; North Charleston, SC; Cleveland, OH; California; and Inkster continue to raise questions about how a few law enforcement officers, in the heat of the moment, may use unnecessary force in arrests.



The Inkster police dash cam video of the arrest of a black man this past January illustrates the importance of this video evidence. One of the officers involved in that beating has now been fired and criminally charged, and the financially strapped City of Inkster has paid a "significant settlement" to the individual involved.

The majority of law enforcement officers and agencies in Michigan and elsewhere are upstanding, conscientious public servants. However, there are some bad cops out there, and HB 4234 (H-3) as currently written, would protect them and their departments from accountability by shielding essential public scrutiny of police actions. That in no way serves the public interest. And it in no way serves the taxpayers who ultimately pay the cost of police brutality jury verdicts and settlements.

Michigan should model its legislation on similar laws in other states that create a practical, reasonable and transparent law on the use of body-worn cameras by law enforcement.

The Michigan Coalition for Open Government is a tax exempt, Michigan nonprofit corporation founded to promote and protect transparency and accountability in governments at the local, state and federal levels.

I apologize for not presenting this testimony to the Judiciary Committee hearing in person, but a scheduling conflict prevents me from attending.

Sincerely,

A handwritten signature in black ink, appearing to read "Jane Briggs-Bunting". The signature is fluid and cursive, with a large loop at the beginning.

Jane Briggs-Bunting
President

Michigan Coalition for Open Government
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cc Rep. Jim Runestad